

**REMARKS**

Applicant notes with appreciation the well-reasoned Office Action embodied in Paper No. 20061208.

Currently, claims 1 and 4-6 stand rejected under 35 U.S.C. §103(a) over Yoshida (US 5,982,414).

The basis of this rejection is that Yoshida discloses a virtual sound system (with reference to Figs. 1 and 2) inclusive of a network-based program (bidirectional signal distribution system of CATV or Internet referencing column 1, line 56 – column 2, line 15) for generating sleep-inducing sound in the frequency range of between 3 and 30 Hz (citing column 5, lines 18-30; column 7, line 35 – column 8, line 60). An access network for accessing the program at the user location to generate the repetitive sleep-inducing sound is also cited as being taught at column 9, lines 28-38). Yoshida is cited as being lacking in not disclosing the web/Internet link also providing sleep-related research, sleep products, or a sleep discussion chat room as called out in the only pending independent claim, namely claim 1.

In order to bolster this limitation of Yoshida, it is stated in Paper No. 20061208, page 3, first full paragraph:

Official Notice is taken that the use of the web links to link to corresponding web sites for retrieving additional research information or to a Chat room/forum or product information of a particular topic of interest, i.e., sleep disorder issues, is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yoshida to have URLs link to related Web sites for the benefit of providing users with additional information related to sleep disorder issues.

In response to this rejection, it is respectfully submitted that the priority date of this application has not been accorded proper weight in assessing the knowledge of one of ordinary skill in the art at the time the invention was made. The pending application claims priority benefit to a provisional application filed February 10, 2000, and while subsequent to the present invention it is routine to find research-related links, commercial product and chat room sites, such links were far less common as of the date of invention and Applicant submits were indeed rare as of the date of the current invention.

Additionally, assuming for argument's sake the existence of web/internet links as recited in pending independent claim 1, Applicant submits that the outstanding rejection lacks a motivation for modifying Yoshida per Official Notice to achieve the claimed invention. Indeed, Yoshida states as a purpose an object of the invention to create a "sweet sleep system at home without imposing a burden on the subscriber to purchase a sweet sleep system." (Column 2, lines 19-20). The inclusion of the web links to information according to pending claim 1 are submitted to be contrary to the stated purpose of inducing sleep and rather serve the purpose of providing a user with a constructive outlet from a sleep disorder in the event that the low frequency sound fails to achieve user sleep and/or relaxation. As such, it is respectfully submitted that the inclusion of such links is contrary to the teaching of Yoshida since access of such links would occur only in recognition of failure of the sleep-inducing system of Yoshida. As such, it is respectfully submitted that Yoshida teaches away from the prior art reference combination as detailed in the outstanding Office Action.

Rather, the only place one of ordinary skill in the art would find motivation for the combination of Yoshida with web links to sleep-related research, sleep products or a sleep

discussion chat room is in the outstanding application. It has long been held that reliance on the pending application as a source of teachings as a basis for an obviousness rejection is considered improper as hindsight reconstruction.

The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., *Grain Processing Corp. v. American Maize-Products Co.*, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

In light of the above remarks, reconsideration and withdrawal as to the rejection of claim 1 under 35 U.S.C. §103(a) over Yoshida et al. in view of Official Notice is respectfully requested. In the event this rejection is maintained, it is respectfully requested that a reference be provided consistent with the Official Notice as to such web links as of the priority date of February 10, 2000, such that the complete scope of the rejection and the motivation for such a combination can be fully evaluated.

With respect to claim 5, Yoshida is cited for the disclosure found at column 7, lines 35-50 and column 7, line 59 – column 8, line 40 with respect to the teaching as to a visual stream changing in concert with the sound (Paper No. 20061208, page 3, third paragraph). While Applicant readily concedes that Yoshida teaches colors of “blue” and “pale blue”, it is respectfully submitted that Yoshida lacks a teaching as to the color “changing in concert with said sound”, as required by claim 5. Rather, Applicant submits that Yoshida only teaches a

single color associated with a single state and lacks a pulsatile visual stream associated with sound modulation at a given frequency. For instance, Yoshida teaches a pale blue color at 6 Hz that appears to remain constant instead of a pulsatile visual stream that would be associated with the subject matter of claim 5 pulsating with a period associated with a given frequency as required by claim 5. As a result, Applicant submits that the subject matter of claim 5 is itself patentable separate from dependency from claim 1, now believed to be in allowable form.

Summary

Claims 1 and 4-6 remain pending in the application. Entry of this response is requested, as well as reconsideration of the outstanding rejection and allowance of the pending claims. Should the Examiner have any suggestion as to how to improve the form of the pending claims, it is respectfully requested that the undersigned attorney in charge of this application be contacted at the telephone number given below to resolve any remaining issues.

Dated: 2-19-07

Respectfully submitted,

By: Avery N. Goldstein, Ph.D./  
Avery N. Goldstein, Ph.D.  
Registration No.: 39,204  
GIFFORD, KRASS, SPRINKLE,  
ANDERSON & CITKOWSKI, P.C.  
2701 Troy Center Drive, Suite 330  
Post Office Box 7021  
Troy, Michigan 48007-7021  
(248) 647-6000  
(248) 647-5210 (Fax)

Attorney for Applicant